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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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9 MICHAEL MANJEET SINGH, Case No. 1:22-cv-01412-KES-EPG (PC)
10 Plaintiff,
11 v.
12 WARDEN PHEIFFER, et al., ORDER CONVERTING MOTION TO
13 Defendant. DISMISS INTO A MOTION FOR
SUMMARY JUDGMENT
(ECF NO. 56)

14 Michael Manjeet Singh (“Plaintiff”) is a state prisoner proceeding *pro se* in this civil
15 rights action filed pursuant to 42 U.S.C. § 1983. (ECF No. 28). This case now proceeds on
16 “Plaintiff’s claims against Defendants Veith and Fowler for excessive force in violation of the
17 Eighth Amendment; Plaintiff’s claims against Defendants Veith, Fowler, and Diaz for
18 deliberate indifference to a serious medical in violation of the Eighth Amendment; Plaintiff’s
19 state law claims against Defendants Veith, Fowler, and Diaz for negligent failure to protect and
20 failure to summon medical care.” (*Id.*, at p. 17).

21 On September 27, 2024, Defendants filed a partial motion to dismiss Plaintiff’s state
22 law claims based on non-compliance with the California Government Claims Act. (ECF No.
23 56). Defendants also filed a request for judicial notice. (ECF No. 57). Plaintiff has also filed a
24 request for judicial notice in response to Defendants’ motion. (ECF No. 65).

25 Because both parties have asked that the Court take judicial notice of documents outside
26 of the complaint in order to resolve the motion, and because it is not clear from the face of the
27 complaint whether Defendants are entitled to dismissal on the basis for failure to comply with
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1 the California Government Claims Act, the Court will convert the motion to dismiss to a
2 motion for summary judgment and provide the parties an opportunity to submit additional
3 argument or evidence if they choose to do so.

4 **I. BACKGROUND**

5 On September 27, 2024, Defendants filed a motion to partially dismiss Plaintiff's state
6 law claims on the ground that Plaintiff failed to comply with California's Government Claims
7 Act. (ECF No. 56). Also on September 27, 2024, Defendants filed a request for the Court to
8 take judicial notice of a letter dated March 30, 2022 from the Government Claims Program
9 explaining to Plaintiff that his claim received on October 19, 2021 did not include the \$25
10 filing fee or fee waiver. (ECF No. 57). Defendants argued that, based in part on the document
11 submitted for judicial notice, Plaintiff's state law claims should be dismissed.

12 On December 10, 2024, Plaintiff filed a request for the Court to take judicial notice of
13 Check #1446 dated April 14, 2022 in the amount of \$25 paid to the order of the Government
14 Claims Program, as well as a copy of the back side of the check indicating that the State of
15 California had deposited the check on May 2, 2022. (ECF No. 65).

16 On December 20, 2024, Defendants filed their reply. (ECF No. 68).

17 Thereafter, on January 31, 2025, Plaintiff filed a further response to Defendants' motion
18 to partially dismiss complaint, arguing that, pursuant to Cal. Gov't Code § 911.3(b), the
19 Defendants' defense as to the time limits for presenting a claim is waived because the
20 Government Claims Program failed to give notice to Plaintiff within 45 days after the claim
21 was presented that the claim was not timely filed. (ECF No. 75). Plaintiff's response again
22 attached the \$25 check to the Government Claims Program, along with a stamped copy of the
23 check noting deposit by the State of California. (ECF No. 75, at p. 16-17).

24 Defendants have not filed a response to Plaintiff's latest submission.

25 **II. LEGAL STANDARDS**

26 Federal Rule of Civil Procedure 12 permits a party to file a motion to dismiss a claim
27 for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). "A Rule
28 12(b)(6) motion tests the legal sufficiency of a claim." *Navarro v. Block*, 250 F.3d 729, 732

1 (9th Cir. 2001). “[A] complaint may be subject to dismissal under Rule 12(b)(6) when an
 2 affirmative defense...appears on its face.” *Jones v. Bock*, 549 U.S. 199, 215, 127 S. Ct. 910,
 3 921, 166 L. Ed. 2d 798 (2007). “[E]ven when failure to exhaust is treated as an affirmative
 4 defense, it may be invoked in a Rule 12(b)(6) motion if the complaint somehow reveals the
 5 exhaustion defense on its face.” *El-Shaddai v. Zamora*, 833 F.3d 1036, 1044 (9th Cir. 2016)
 6 (quoting *Thompson v. Drug Enf’t Admin.*, 492 F.3d 428, 438 (D.C. Cir. 2007)).

7 “Generally, a court may not consider material beyond the complaint in ruling on a
 8 Fed.R.Civ.P. 12(b)(6) motion.” *Intri-Plex Techs., Inc. v. Crest Group., Inc.*, 499 F.3d 1048,
 9 1052 (9th Cir. 2007) (footnote and citation omitted). “There are two exceptions to this rule: the
 10 incorporation-by-reference doctrine, and judicial notice under Federal Rule of Evidence 201.”
 11 *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 998 (9th Cir. 2018).

12 “When presented with ‘matters outside the pleadings’ in connection with a motion to
 13 dismiss for failure to state a claim under Rule 12(b)(6)..., the district court may choose to
 14 exclude such extrinsic matters and address the motion under the applicable Rule 12 standards,
 15 or it may convert the motion into “one for summary judgment under Rule 56. See Fed. R. Civ.
 16 P. 12(d).” *Jones v. L.A. Cent. Plaza LLC*, 74 F.4th 1053, 1059 (9th Cir. 2023). See *Anderson v.*
 17 *Angelone*, 86 F.3d 932, 934 (9th Cir. 1996) (finding conversion of motion to dismiss into one
 18 for summary judgment proper when the district court expressly relied upon Regulations
 19 nowhere in the record except for Defendant’s affidavit).

20 “Before summary judgment may be entered against a party, that party must be afforded
 21 both notice that the motion is pending and an adequate opportunity to respond.” *Portland Retail*
22 Druggists Ass’n v. Kaiser Found. Health Plan, 662 F.2d 641, 645 (9th Cir. 1981). “Implicit in
 23 the ‘opportunity to respond’ is the requirement that sufficient time be afforded for discovery
 24 necessary to develop ‘facts essential to justify (a party’s) opposition’ to the motion.
 25 Fed.R.Civ.P. 56.” *Id.* “Where the non-moving party is appearing *pro se*, the notice
 26 requirements of Rule 56(c) must be strictly adhered to when a motion to dismiss under Rule
 27 12(b)(6) is converted into one for summary judgment.” *Garaux v. Pulley*, 739 F.2d 437, 439–
 28 40 (9th Cir. 1984).

1 **III. ANALYSIS**

2 Here, both parties have submitted documents in connection with Defendants' motion to
3 dismiss, and have both argued that the question of Plaintiff's compliance, or excuse from
4 compliance, under the Government Claims Act requires the Court to evaluate documents
5 submitted for judicial notice. Specifically, Defendants ask the Court to rely on the
6 government's letter notifying Plaintiff that he had not submitted the required fee in connection
7 with his submission of the claim to the Government Claims Board, and Plaintiff has asked the
8 Court to rely on a copy of the check sent to the Board, as well as a copy of the back of the
9 cashed check showing that the State of California deposited that check. Thus, neither party
10 argues that the issue of Plaintiff's compliance, or excuse from compliance, can be determined
11 on the face of Plaintiff's complaint.

12 Accordingly, the Court considers whether it should proceed to determine the Motion to
13 Dismiss, and recommend denial of that motion to the extent that the issue is not clear on the
14 face of the complaint, or convert the motion to dismiss to a motion for summary judgment.

15 Given that the legal issue is briefed in the parties' submissions, and that both parties ask
16 the Court consider documents submitted, and considering that neither party has asked for an
17 opportunity to take further discovery on this issue, the Court finds that conversion to a motion
18 for summary judgment is proper. *See Anderson v. Angelone*, 86 F.3d at 934.

19 Accordingly, the Court will convert Defendants' partial motion to dismiss into a motion
20 for summary judgment. Both parties will be given 30 days to submit additional argument or
21 evidence if they choose to do so. Alternatively, either party may file a request to hold the
22 motion in abeyance to allow for further discovery on this issue.

23 **IV. NOTICE AND WARNING OF REQUIREMENTS FOR OPPOSING
24 DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

25 Pursuant to *Rand v. Rowland*, 154 F.3d 952, the Court hereby notifies Plaintiff of the
26 following rights and requirements for opposing Defendants' motion for summary judgment.
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1 **NOTICE AND WARNING:**

2 The Court has converted Defendants' partial motion to dismiss into a
3 motion for summary judgment. The motion for summary judgment seeks to
4 have claims in your case dismissed. A motion for summary judgment under
5 Rule 56 of the Federal Rules of Civil Procedure will, if granted, result in
6 dismissal of certain claims from your case.

7 Rule 56 tells you what you must do in order to oppose a motion for
8 summary judgment. Generally, summary judgment must be granted when
9 there is no genuine issue of material fact—that is, if there is no real dispute
10 about any fact that would affect the result of your case, the party who asked
11 for summary judgment is entitled to judgment as a matter of law, which will
12 result in dismissal of certain claims in your case. When a party you are suing
13 makes a motion for summary judgment that is properly supported by
14 declarations (or other sworn testimony), you cannot simply rely on what your
15 complaint says. Instead, you must set out specific facts in declarations,
16 depositions, answers to interrogatories, or authenticated documents, as
17 provided in Rule [56(c)],¹ that contradict the facts shown in Defendants'
18 declarations and documents and show that there is a genuine issue of
19 material fact for trial. If you do not submit your own evidence in opposition,
20 summary judgment, if appropriate, may be entered against you. If summary
21 judgment is granted, claims subject to Defendants' motion will be dismissed
22 without a trial.

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27 ¹ The substance of Rule 56(e) from the 1998 version, when *Rand* was decided, has been
28 reorganized and renumbered with the current version of Rule 56(c).

EASTERN DISTRICT OF CALIFORNIA LOCAL RULE REQUIREMENTS

You are responsible for filing all evidentiary documents cited in the opposing papers. Local Rule 260(b). If additional discovery is needed to oppose summary judgment, Local Rule 260(b) requires you to “provide a specification of the particular facts on which discovery is to be had or the issues on which discovery is necessary.” See also Fed. R. Civ. P. 56(d).

V. CONLUSION AND ORDER

Accordingly, based on the foregoing, IT IS HEREBY ORDERED THAT:

1. Defendants' partial motion to dismiss (ECF 56) is converted into a motion for summary judgment; and
 2. No later than 30 days from the date of service of this order, each party may file an additional brief and/or additional evidence they wish to be considered related to Defendants' argument that Plaintiff's state law claims should be dismissed for failure to comply with the Government Claims Act. If no additional evidence or argument is received, the Court will resolve the motion on the papers already submitted in connection with Defendants' motion to dismiss.
 3. Each party has 21 days to file a response to the other party's supplement, if any.
 4. Alternatively, the parties may file a request that the Court hold this motion in abeyance in order to permit the parties to take discovery needed to resolve this legal issue. Any such request should provide a specification of the particular facts on which discovery is to be had or the issues on which discovery is necessary.

IT IS SO ORDERED.

Dated: June 30, 2025

/s/ Eric P. Gross
UNITED STATES MAGISTRATE JUDGE